

1 42. Also on or about December 8, 2006, KISHABA had plaintiff sign a Form 1003 Uniform
2 Residential Loan Application. (Form 1003 Application Dated December 8, 2006 is
3 attached hereto as "Exhibit D" and incorporated by reference.)

4 43. Plaintiff also signed the Deed of Trust securing the loan with the SUBJECT PROPERTY
5 on December 8, 2006, which necessarily precluded the required loan disclosures by
6 defendants.

7 44. On or about December 8, 2006, KISHABA promised plaintiff that the February mortgage
8 payment would be paid by INTERNATIONAL from the loan proceeds. (See Amended
9 Escrow Instructions dated December 20, 2006 attached hereto as "Exhibit E" and
10 incorporated by reference.)

11 45. Due to his reliance on KISHABA'S promise of a loan closing "any day" beginning in June
12 2006, plaintiff accumulated significant penalties, late fees, and suffered substantial
13 damage to his credit.

14 46. Because of the financial condition that KISHABA placed plaintiff in, plaintiff signed the
15 loan documents on December 8, 2006, but did not see or sign any document indicating
16 that a two-year prepayment penalty would apply.

17 47. Each time that plaintiff signed documents KISHABA failed to give a copy to plaintiff
18 despite plaintiff's request for copies, but promised that plaintiff would receive copies by
19 mail.

20 48. At no time during any of the document signings did plaintiff receive any documents
21 regarding the loan. Further, plaintiff received no proper documentation regarding the
22 mandatory disclosures required by the Federal Truth and Lending law including a
23 three-day right to rescind this transaction.

24 49. Plaintiff eventually received blank notices of right to cancel; however, there was no date
25 indicating when the right to cancel accrued or the time within which to rescind.

26 50. Plaintiff is informed, believes, and thereon alleges that KISHABA used document's from
27 all three document signings to complete the final loan submission package.

28 51. KISHABA mislead, lied, and lead a campaign of confusion and ever altered annual

1 percentage rates, broker points, fees, and prepayment penalties.

2 52. On or about December 20, 2006, JAQUEZ on behalf of INTERNATIONAL, sent

3 plaintiff a document indicating that the escrow was closed as of December 20, 2006, and

4 that also indicates plaintiff would be receiving a wire transfer in the amount of

5 \$25,128.44. (See Letter dated December 20, 2006 attached hereto as "Exhibit F" and

6 incorporated by reference.)

7 53. On or about December 20, 2006, FREMONT recorded a Deed of Trust dated December

8 8, 2006 securing a loan against the SUBJECT PROPERTY in the amount of \$773,500.

9 (See Deed of Trust recorded December 20, 2006 attached hereto as "Exhibit G" and

10 incorporated by reference.)

11 54. On or about January 1, 2007, INTERNATIONAL faxed a HUD-1 Statement indicating

12 that plaintiff's cash out would be \$67,906.85. (See HUD-1 faxed January 4, 2007 attached

13 hereto as "Exhibit H" and incorporated by reference.)

14 55. Despite the multiple promises and various amounts of cash out listed, plaintiff never

15 received any documentation or information that he would receive less than \$65,605.36

16 cash from the refinance transaction.

17 56. However, INTERNATIONAL sent only one wire to plaintiff in the amount of

18 \$25,128.44. Plaintiff did not receive any other payment from INTERNATIONAL or

19 anyone in relation to the refinance.

20 57. Thus, plaintiff's cash had gone down from the original \$105,000 promised by KISHABA

21 to \$65,605.36 listed in loan and HUD-1 statements to actually receiving \$25,128.44.

22 58. Plaintiff called INTERNATIONAL to determine when he was going to receive the

23 remaining \$40,476.92. INTERNATIONAL employees refused to tell plaintiff what

24 happened to the remaining funds or how they had applied those funds.

25 INTERNATIONAL further refused to provide plaintiff with any further documents,

26 deeds, notes, loan disclosures, escrow documents, or HUD-1 Statements.

27 59. KISHABA was not properly licensed in relation to the loan transaction. KISHABA is not

28 licensed as a real estate agent. INTERNATIONAL MORTGAGE and its sister company,

1 INTERNATIONAL ESCROW, were both suspended a month before the loan funded.
2 On or before November 20, 2006, before consummation of the loan, International
3 Mortgage's and International Escrow's licenses were suspended because they failed to
4 maintain the required surety bond. At Paragraph 11 of Order Revoking Escrow Agent's
5 License, it indicates that on October 12, 2007, the State of California Department of
6 Corporations revoked International Mortgage Company's finance lender's license
7 pursuant to Fin. C. § 22107 effective November 6, 2007. International had "commingled
8 trust funds ... or otherwise made unauthorized disbursements of trust funds ... had a trust
9 account shortage ... and had failed to maintain and/or provide books and records to the
10 Commission..."

- 11 60. Kishaba, International Mortgage and International Escrow then proceeded to rip off
12 Plaintiff for points up front and loan proceeds on the back side.
- 13 61. Plaintiff is informed and believes, and thereon alleges, that INTERNATIONAL,
14 JAQUEZ, SAUERACKER, CHEN, KISHABA, and HAWORTH acted as an unlicensed
15 mortgage broker.
- 16 62. In or about March 2007, FREMONT contacted plaintiff to inform him that the February
17 2007 payment was not paid, which KISHABA had promised that INTERNATIONAL
18 would pay from loan proceeds. (See Exhibit E.)
- 19 63. According to FREMONT, no payment was made for the loan payment due on February 1,
20 2007.
- 21 64. Plaintiff requested that FREMONT assist in discovering the status of the missing
22 \$40,476.92 and the missing February 1, 2007 payment. Fremont made no effort to assist.
- 23 65. INTERNATIONAL, KISHABA, CHEN, JAQUEZ, and SAUERACKER refused to
24 communicate with plaintiff or offer any explanations or solutions as to the missing
25 payment or funds.
- 26 66. Plaintiff made payments of over \$17,000 to FREMONT; however, FREMONT failed to
27 properly apply and credit the payments.
- 28 67. On July 30, 2007, FREMONT sold and/or transferred its interest in receiving the benefits

1 of the Note secured by the property. Because MERS is the nominal title holder, Plaintiff
2 is unaware of the entity which was entitled to receive the benefits of the Note. Based on
3 information and belief, Fremont sold the right to receive the benefits of the subject Note
4 to GMAC or TCIF. (See letter from FREMONT dated July 30, 2007 attached hereto as
5 "Exhibit I" and incorporated by reference.)

6 68. Plaintiff expected that he would receive a payment booklet from GMAC and waited to
7 begin making the payments until he received the payment booklet.

8 69. Due to the actions of defendants in relation to the funds that were never given to plaintiff
9 and FREMONT'S misapplication of plaintiff's payments, plaintiff was substantially
10 behind in payments by August 2008.

11 70. Plaintiff attempted on several occasions to have GMAC investigate the missing funds,
12 misapplied payments, and to work out forbearance plans.

13 71. GMAC failed to properly account for and apply funds plaintiff paid to FREMONT.

14 72. GMAC failed to properly account for and apply funds plaintiff paid to GMAC.

15 73. On or about October 23, 2007, GMAC sent plaintiff a Notice of Default and caused the
16 same to be recorded with the Orange County Recorder's Office. (See Notice of Default
17 dated October 23, 2007 attached hereto as "Exhibit J" and incorporated by reference.)

18 74. GMAC accepted over \$3,500.00 in relation to one forbearance plan, but then rejected the
19 forbearance agreement.

20 75. In two other instances, GMAC returned payments by the plaintiff in the approximate
21 amounts of \$3,000 and \$7,500.

22 76. On or about February 26, 2008, GMAC sent plaintiff Notice of Trustee's Sale with the
23 sale to take place on March 26, 2008. (See Notice of Trustee's Sale Dated February 26,
24 2008 attached hereto as "Exhibit K" and incorporated by reference.)

25 77. On or about September 22, 2008, GMAC caused the property to be sold at a foreclosure
26 sale. Title was placed in GMAC's name. After the property was sold at foreclosure
27 auction, GMAC was the legal title holder. GMAC twice brought unlawful detainer
28 actions against Plaintiff claiming to be the owner of the property.

- 1 78. GMAC failed to properly calculate sums due by plaintiff in relation to the foreclosure of
- 2 the Trust Deed, by failing to properly apply payments plaintiff made to FREMONT and
- 3 to GMAC.
- 4 79. Plaintiff contends that Defendant Fremont made the subject loan with the intent to
- 5 foreclose and steal Plaintiff's equity. On March 8, 2007, the FDIC ordered Fremont to
- 6 cease and desist its sub-prime lending.
- 7 80. On or about March 20, 2009, GMAC transferred title to the property to Truman Capital.
- 8 81. On May 15, 2009, Truman Capital transferred title to Island Source II via a grant deed.

**FIRST CAUSE OF ACTION
FOR NEGLIGENCE
AS AGAINST FREMONT and CHICAGO TITLE**

12. 82. Plaintiff reallegs and incorporates paragraphs 1 through 81 as though fully set forth.
13. 83. Plaintiff alleges this first separate and distinct cause of action for negligence as against
14. Fremont, Chicago Title and Does 1 to 25.
15. 84. Defendants Fremont, Chicago Title and Does 1 to 25 had a duty to deliver the proceeds of
16. the subject Note secured by Deed of Trust to Plaintiff. This required that the Note/loan
17. proceeds be delivered to a licensed escrow company.
18. 85. Fremont and Chicago Title breached their duty to Plaintiff by failing to ascertain that
19. International Escrow, International Mortgage and their employees were not licensed.
20. 86. As set forth below, the INTERNATIONAL defendants stole a substantial portion of the
21. proceeds of the Note and failed to transfer to Fremont the first month's payment which
22. was held in escrow. Because International and its employees were not licensed, they were
23. not entitled to any commissions, points, premiums or other proceeds from the subject
24. Note.
25. 87. As a direct and proximate result of the breach of duty by Defendants Fremont and
26. Chicago Title, Plaintiff only a small portion of the anticipated cash out of the loan and the
27. prior loan on the property was paid off with a higher interest rate note, as well as the loss
28. of use of said cash out to "prime the pump" of his business which was in need of capital

and to make needed repairs to his home.

**SECOND CAUSE OF ACTION
FOR COMMON COUNTS**

AS AGAINST FREMONT, CHICAGO TITLE, KISHABA, JAQUEZ, SAUERACKER,
INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW,
HAWORTH, and CHEN

6 88. Plaintiff reallegs and incorporates paragraphs 1 through 87 as though fully set forth.

7 89. Plaintiff alleges this first separate and distinct cause of action for negligence as against

8 Fremont, Chicago Title, KISHABA, JAQUEZ, SAUERACKER, INTERNATIONAL

9 MORTGAGE, INC, INTERNATIONAL ESCROW, HAWORTH, and CHEN and Does

10 1 to 25.

11 90. Plaintiff alleges that Defendants Fremont, Chicago Title, KISHABA, JAQUEZ,

12 SAUERACKER, INTERNATIONAL MORTGAGE, INC. INTERNATIONAL

13 ESCROW, HAWORTH, and CHEN, and each of them, became indebted to Plaintiff for

14 money had and received by Defendants, and each of them, for the benefit of Plaintiff in

15 the amount of \$773,500.

16 91. The reasonable value due and unpaid to Plaintiff is estimated to be \$173,500 plus

17 prejudgment interest in an amount subject to proof.

18 92. Plaintiff requests attorneys fees pursuant to contract.

THIRD CAUSE OF ACTION BREACH OF FIDUCIARY DUTY

(Against JASON KISHABA, SANDRA JAQUEZ, PETER SAUERACKER,
INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW, ANTHONY
HAWORTH, CAITLIN CHEN)

23 93. Plaintiff repeats and realleges the allegations of paragraphs 1 through 92, above, as
24 though fully set forth herein at length.

25 94. Defendants owed a duty to plaintiff to act in accordance with statutory procedures for
26 GMAC had a further duty to follow legal process for Notice of a Trustee's Sale.

27 95. Defendants KISHABA, JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL
28 further breached their duties to plaintiff in failing to give plaintiff required disclosures

1 and failing to properly advise the plaintiff as to the terms and conditions of the loan
2 transaction.

3 96. Defendant's JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL had a duty to
4 plaintiff to ensure that all persons dealing with plaintiffs loan were properly licensed,
5 which they breached.

6 97. Defendants JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL breached its
7 duty to plaintiff as his Escrow Agent by accepting, depositing, and retaining over \$40,000
8 in funds belonging to the plaintiff without written instructions signed by the plaintiff.

9 98. Defendants JAQUEZ, SAUERACKER, CHEN, AND INTERNATIONAL breached its
10 duty to plaintiff as by failing and refusing to account for funds, communicate with,
11 plaintiff, and provide documents as requested.

12 99. As a direct and proximate result of defendants' breach of duties, plaintiff has suffered
13 damages in amounts exceeding the jurisdictional limits of this court and, which will be
14 proven at the time of trial.

15 FOURTH CAUSE OF ACTION
16 MISREPRESENTATION

17 (Against JASON KISHABA, SANDRA JAQUEZ, PETER SAUERACKER,
INTERNATIONAL MORTGAGE, INC. INTERNATIONAL ESCROW, ANTHONY
HAWORTH, CAITLIN CHEN, G AND Z APPRAISERS, NAZEH MUAYADAZEM)

18 100. Plaintiff repeats and realleges the allegations of paragraphs 1 through 99, above, as
19 though fully set forth herein at length.

20 101. Beginning in June 2006 KISHABA misrepresented the terms and conditions on the
21 plaintiff's loan, as more fully alleged above. KISHABA further misrepresented his
22 employment status and ability to legally act as a mortgage broker with
23 INTERNATIONAL through CHEN'S license.

24 102. INTERNATIONAL, JAQUEZ, SAUERACKER, and KISHABA further misrepresented
25 on multiple occasions, the amount of cash that plaintiff would receive from the refinance.
26 They further misrepresented that the increased fees and points were required by Fremont
27 rather than to line their own pockets.

28 103. Further, INTERNATIONAL MORTGAGE, CHEN, KISHABA, HAWORTH, JAQUEZ

1 and SAUERACKER misrepresented that they were licensed to arrange the loan when
2 their license had in fact been suspended.

3 104. On or about September 2006, G AND Z APPRAISERS, NAZEH MUAYADAZEM
4 performed an appraisal of the subject real property and knowingly overstated the value of
5 the subject property so as to induce Plaintiff to enter into the Note secured by Deed of
6 Trust. The value stated in the appraisal was \$965,000, while the true value was \$800,000.
7 Defendants INTERNATIONAL MORTGAGE, CHEN, KISHABA, HAWORTH,
8 JAQUEZ and SAUERACKER induced G & Z and Muayadazen to misrepresent the value
9 of the property, and approved and ratified such misrepresentation knowing the falsity
10 thereof so as to induce Plaintiff to enter into the Note secured by Deed of Trust. Based on
11 information and belief, Fremont knew the value of the property was overstated, knew it
12 was going to be shut-down by the federal government, and made the loan with the intent
13 to defraud Plaintiff.

14 105. Plaintiff is informed believes and based thereon alleges that when defendants made the
15 representation as alleged herein, defendants had no reasonable ground for believing them
16 to be true. Defendants made these representations with the intention of inducing plaintiff
17 to act in reliance on these representations in the manner alleged, or with the exception
18 that plaintiff would so act.

19 106. Plaintiff, at the time these representations were made by defendants and at the time the
20 plaintiff took the actions herein alleged, was ignorant of the falsity of defendants'
21 representations and believed them to be true.

22 107. In reliance on the above-alleged false representations, plaintiff was induced to continue
23 with the refinance, forgo other refinance options, and incur substantial penalties and fees
24 on his existing mortgage.

25 108. Plaintiff would not have refinanced the SUBJECT PROPERTY with defendants if not for
26 the above-alleged false representations by defendants.

27 109. Plaintiff's reliance on defendants' representations were justified because defendants were
28 mortgage, escrow, and real estate professionals.

- 1 110. As a proximate result of defendants' negligence as herein alleged, plaintiff has been
- 2 damaged in an amount to be determined at trial.
- 3 111. In doing the' acts herein alleged above, defendants acted with oppression, fraud and
- 4 malice, and plaintiffs are entitled to exemplary and punitive damages.
- 5 112. Plaintiff seeks compensation for costs of suit herein incurred, including but not limited to
- 6 attorney's fees.

7 **FIFTH CAUSE OF ACTION**
8 **FOR REFORMATION OF CONTRACT**
9 **(AS AGAINST FREMONT and MERS, GMAC, TCIF, ISLAND SOURCE**
as **SUCCESSORS IN INTEREST TO FREMONT)**

- 10 113. Plaintiff repeats and realleges the allegations of paragraphs 1 through 110 as though fully
- 11 set forth herein at length.
- 12 114. Plaintiff contends that INTERNATIONAL MORTGAGE, INTERNATIONAL
- 13 ESCROW, and their agents and employees were unlicensed to act as mortgage brokers at
- 14 all times relevant.
- 15 115. Plaintiff contends that the loan is usurious in that it exceeds the maximum interest rate
- 16 that may be charged on loans in writing for use primarily for personal, family, or
- 17 household purposes. Because International, which arranged the Note secured by Deed of
- 18 Trust, was not licensed to do so, said Note secured by Deed of Trust was not exempted
- 19 from the interest rate limitations on loans, made, or arranged by any person licensed as a
- 20 real estate broker by the State of California and secured in whole or in part by liens on
- 21 real property.
- 22 116. As such, the interest rate, which is illegal, should be stricken from the Note secured by
- 23 Deed of Trust, and the Note secured by Deed of Trust should be rewritten so that all
- 24 payments made should go directly towards the principal of the loan.
- 25 117. Further, because at all times relevant, International Escrow was not a licensed California
- 26 Escrow company and International Mortgage was not a licensed Mortgage Broker at any
- 27 time relevant to the within action, all monies delivered to them and neither delivered to
- 28 Plaintiff nor expended to pay Plaintiff's prior home loan should be considered payments

1 towards the principal on the Note Secured by Deed of Trust.

**SIXTH CAUSE OF ACTION
BREACH OF CONTRACT**

3 BREACH OF CONTRACT
(Against Defendants FREMONT, MERS, GMAC, TCIF, ISLAND SOURCE and DOES 1-25)

4 118. Plaintiff repeats and realleges the allegations of paragraphs 1 through 115, above, as
5 though fully set forth herein at length.

6 119. Plaintiff pleads this third separate and distinct cause of action as against FREMONT,
7 MERS, GMAC, TCIF, ISLAND SOURCE and DOES 1 - 25.

8 120. Plaintiff and FREMONT entered into written contracts, namely the a promissory Note,
9 and Deed of Trust, regarding refinancing the SUBJECT PROPERTY. (See Exhibit G.)

10 121. As part of the eventual contract, FREMONT was to loan to plaintiff the sum of \$773,500
11 with at least \$65,605.36 in cash directly to the plaintiff. Because INTERNATIONAL and
12 its employees and agents were unlicensed, all of the proceeds of the loan, less monies
13 used to pay off the prior loan secured by the property, should have been delivered to
14 Plaintiff.

15 122. FREMONT caused only \$25,128.44 to be delivered to Plaintiff and breached the contract
16 by failing to deliver over \$40,476.92 in funds to the plaintiff, INSTEAD delivering the
17 funds to INTERNATIONAL MORTGAGE and INTERNATIONAL ESCROW, both of
18 which were unlicensed. INTERNATIONAL stole the proceeds and took substantial
19 points and fees to which it was not entitled. As such, there has been no effective delivery
20 of some or all of the proceeds of the Note to Plaintiff.

21 123. FREMONT further breached the contract by attempting to collect payments on the
22 \$40,476.92 that was never delivered to the plaintiff.

23 124. An additional \$85,000 was unlawfully delivered to INTERNATIONAL, which funds it
24 was not entitled to and which funds were not delivered to Plaintiff.

25 125. As FREMONT'S successors in interest or nominal trustees of the Note secured by Deed
26 of Trust, MERS, GMAC, TCIF, and ISLAND SOURCE, stand in FREMONT'S shoes
27 and are responsible for all past misdeeds of FREMONT and/or are subject to any defenses
28 Plaintiff may have to enforcement of the subject Note secured by Deed of Trust.

- 1 126. GMAC, TCIF, MERS and ISLAND SOURCE, through the purchase of the Note and
- 2 Deed of Trust secured by the SUBJECT PROPERTY, are also are parties to those
- 3 contracts with plaintiff.
- 4 127. FREMONT and GMAC breached the written contract by failing to properly account for
- 5 funds due to plaintiff, attempting to collect on debts secured by fraud, failing to properly
- 6 post payments by plaintiff to both FREMONT and GMAC, and by wrongfully foreclosing
- 7 on the Trust Deed.

8 **SEVENTH CAUSE OF ACTION**
9 **BREACH OF CONTRACT**

10 (Against Defendants KISHABA, JAQUEZ, SAUERACKER, INTERNATIONAL
11 MORTGAGE, INC., INTERNATIONAL ESCROW, ANTHONY HAWORTH, and CAITLIN
12 CHEN)

- 13 128. Plaintiff repeats and realleges the allegations of paragraphs 1 through 125, above, as
- 14 though fully set forth herein at length.
- 15 129. INTERNATIONAL also had mortgage broker and a written escrow contract with
- 16 plaintiff.
- 17 130. INTERNATIONAL breached the mortgage broker contract through misrepresentations,
- 18 bait and switch, and failing to complete the refinance on the promised term.
- 19 INTERNATIONAL also breached the mortgage broker contract by being prohibited from
- 20 acting as a mortgage broker and escrow agent at all times relevant.
- 21 131. For example, INTERNATIONAL through its agent KISHABA initially promised to
- 22 charge only one half broker point, which would have culminated in a broker fee of
- 23 \$3,867.50. INTERNATIONAL ended up charging over 3.128 points culminating in a
- 24 \$24,195.08 broker fee. On top of that, INTERNATIONAL ended up getting a substantial
- 25 Yield Spread Premium, which it failed to properly disclose to plaintiff. Further, the
- 26 INTERNATIONAL defendants stole and failed to deliver to Plaintiff approximately
- 27 \$110,000 in proceeds of the Note secured by Deed of Trust, through unearned fees,
- 28 points, yield spread premiums and theft.
- 29 132. Plaintiff has performed all conditions, covenants and promises required on his part to be
- 30 performed in accordance with the terms and conditions of the contract or his performance

1 is excused by the material breaches of defendants.

2 133. On or about March 2007 and thereafter, Plaintiff discovered that defendants were not
3 performing their obligations pursuant to the written contracts.

4 134. Plaintiff has suffered damages in an amount to be proven at trial.

5 135. Plaintiff seeks compensation for costs of suit herein incurred, including but not limited to
6 attorneys fees.

7 EIGHTH CAUSE OF ACTION

8 DECEIT

9 (Against INTERNATIONAL ESCROW, INTERNATIONAL MORTGAGE, JASON
KISHABA, SANDRA JAQUEZ, PETER SAUERACKER, CAITLIN CHEN, ANTHONY
HAWORTH)

10 136. Plaintiff repeats and realleges the allegations of paragraphs 1 through 134, above, as
11 though fully set forth herein at length.

12 137. Plaintiff is informed, believes, and thereon alleges that KISHABA took documents from
13 the three different document signings to create one fraudulent loan documentation
14 package.

15 138. Plaintiff is informed, believes, and thereon alleges that KISHABA'S creation of one loan
16 documentation package with documents signed on three different occasions with different
17 terms amounts to forgery.

18 139. At the time defendants made the above alleged statements, defendants, and each of them,
19 knew that the representations and documents were false.

20 140. Defendants have unlawfully used the falsified documents and fraudulent conduct in
21 attempting to conduct a trustee's sale and obtain a non-judicial foreclosure and unlawful
22 detainer action.

23 141. As a direct and proximate result of the reliance upon the truth of defendants'
24 representations, Plaintiff has suffered damages in an amount unknown at this time but
25 within the jurisdiction of this court. In addition to the funds already paid, plaintiff will be
26 required to expend substantial additional funds to set aside the events derivative of
27 defendants' conduct. Plaintiff does not know the full extent of such expenditures and
28 other consequential damages at the present time, but will seek leave of court to amend

1 this pleading when that amount has been ascertained.

2 142. Defendants' conduct in making these intentional misrepresentations was done with
3 oppression, fraud or malice, in that defendants willfully, consciously and despicably
4 disregarded Plaintiffs' rights. Plaintiff is therefore entitled to punitive damages in an
5 amount to be determined at trial.

6 **NINTH CAUSE OF ACTION**
7 **CANCELLATION OF WRITTEN INSTRUMENT**
8 (Against Fremont, GMAC, TCIF, Island Source)

9 143. Plaintiff repeats and realleges the allegations of paragraphs 1 through 141, above, as
10 though fully set forth herein at length.
11 144. This ninth separate and distinct cause of action for cancellation of written instrument is
12 pleaded as against Fremont, and GMAC, TCIF and Island Source as successors in interest
13 or assigns of the Note secured by Deed of Trust entered into between Plaintiff and
14 Defendant Fremont. It is pleaded as an alternative to the fifth cause of action for
15 reformation of contract, and is in no way intended to vitiate the allegations therein.
16 Plaintiff will choose his remedy at time of trial.
17 145. There is an existence a certain written instrument dated December 20, 2006, which is the
18 disputed trust deed (Exhibit "G") between plaintiff and defendant FREMONT.
19 146. The Trust Deed (Exhibit "G") was procured through defendants' fraud,
20 misrepresentations, and fraudulent compilation of documents, as described hereinabove.
21 If the disputed trust deed is left outstanding, Plaintiff will be subjected to serious and
22 substantial injury in that the fraudulently procured document eliminating all of plaintiff's
23 interest in the subject property.
24 147. Plaintiff offers by this Complaint to return any property delivered to him from the
25 proceeds of this action.
26 148. The fraudulent conduct of defendants herein was oppressive and despicable and subjected
27 Plaintiff to cruel and unjust hardships in conscious disregard of Plaintiff's rights, and
therefore Plaintiff seeks exemplary and punitive damages.

28 **TENTH CAUSE OF ACTION**